



MICHIGAN COURTS NEWS RELEASE

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FOR IMMEDIATE RELEASE

Michigan Supreme Court Announces Cases for October 2016 Oral Arguments

LANSING, MI, September 12, 2016—The Michigan Supreme Court announced that oral arguments in 11 cases will be heard October 5 and 6, 2016. The Court will convene to hear the first case at 9:30 a.m., October 5, in the [old Supreme Court courtroom](#) on the third floor of the State Capitol. The Court will return to the Supreme Court courtroom, located on the sixth floor of the Hall of Justice, 925 W. Ottawa Street, to hear the other 10 cases. The schedule of arguments is posted on the Supreme Court's oral arguments [homepage](#).

The Court broadcasts its oral arguments and other hearings [live](#) on the Internet via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench. Follow the Court on [Twitter](#) to receive regular updates as cases are heard.

Please contact the Office of Public Information at 517 373-0714 or browneb@courts.mi.gov for permission to film or photograph during the hearing. See the link to [Request and Notice for Film and Electronic Media Coverage of Court Proceedings](#).

Wednesday, October 5, 2016

Morning Session - in the Old Supreme Court courtroom, Capitol Building

[In re Application of MI Electric Transmission Co](#) – Case # 150695

This case focuses on the Michigan Public Service Commission's (MPSC) grant of a certificate of public convenience and necessity to the Michigan Electric Transmission Company (METC) to locate an electric transmission line in Oshtemo Charter Township, in contravention of the Township's local ordinance and regulations. The MPSC authorized construction of the transmission line by issuing METC a certificate under the Electric Transmission Line Certification Act (Act 30). Act 30 states that, if granted, a certificate "shall take precedence over a conflicting local ordinance, law, rule, regulation, policy, or practice that prohibits or regulates the location or construction of a transmission line for which the commission has issued a certificate." The Supreme Court will consider whether Act 30 is consistent with the first sentence of Const 1963, art 7, § 29, which states: "No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted

authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village.”

Afternoon Session

People of MI v Timothy Wade Horton – Case # 150815

Defendant Timothy Horton was charged with breaking and entering with the intent to commit larceny as a fourth habitual offender. Horton agreed to plead no contest to the charge, in exchange for being charged as a second habitual offender. At the sentencing hearing, however, Horton moved to withdraw his plea, claiming that it was not freely, knowingly and voluntarily made. Questions before the Supreme Court include: (1) whether the defendant’s unconditional no contest plea waived his claim of ineffective assistance of trial counsel based on trial counsel’s failure to make a motion to dismiss for a 180-day rule violation, MCL 780.131 and 780.133, in light of *People v Lown*, 488 Mich 242, 267-270 (2011), or for constitutional speedy trial violations; (2) whether the defendant’s unconditional no contest plea waived his claim of ineffective assistance of trial counsel for trial counsel’s failure to inform the defendant that an unconditional no contest plea would waive his right to appeal on the basis of a 180-day rule violation or constitutional speedy trial violations; and (3) whether trial counsel’s failure to inform the defendant that his unconditional no contest plea would waive his right to appeal on the basis of a 180-day rule violation and constitutional speedy trial violation made defendant’s plea unknowing and involuntary.

City of Coldwater v Consumers Energy Co - Case # 151051 and **City of Holland v Consumers Energy Co** - Case # 151053

In separate cases, the Cities of Holland and Coldwater sought a circuit court ruling that their municipal utility companies could offer electrical service to particular properties in lieu of defendant Consumers Energy Company. In each case, Consumers argued that the municipalities could not offer electrical service to the customers because Consumers had already provided service to the properties, relying on MCL 124.3(2), Michigan Public Service Commission Rule 411, and *Great Wolf Lodge of Traverse City, LLC v PSC*, 489 Mich 27 (2011). The circuit courts ruled in the municipalities’ favor, and Consumers Energy appealed. The Court of Appeals consolidated the cases and affirmed in a published opinion. The Supreme Court has scheduled oral argument on Consumers Energy’s applications for leave to appeal.

City of Huntington Woods v City of Oak Park – Case # 152035

This case involves a dispute over the funding for the 45th District Court, which sits exclusively in Oak Park, but encompasses Oak Park, Huntington Woods, Pleasant Ridge, and Royal Oak Township. The trial court concluded that the plaintiff cities of Huntington Woods and Pleasant Ridge have a statutory duty to contribute to the costs of operating 45th District Court. It also ruled that the defendant City of Oak Park does not have a statutory duty to disburse to the plaintiffs a share of the money collected by the court to fund retiree medical benefits and the court’s building fund, rejecting the plaintiffs’ argument that these revenues were actually a “fine” or “cost” and therefore subject to revenue sharing. The Court of Appeals affirmed the trial court in a published opinion. Plaintiffs appealed. The Supreme Court issued an order scheduling oral argument on whether to grant the application or take other action. The questions before the Court include: (1) whether in the absence of an agreement for joint funding of a district court in districts of the third class where the court sits in only one political subdivision, all district

funding units within the district have an independent obligation to fund the court; (2) whether the parties in this case agreed that the 45th District Court would be funded entirely by the City of Oak Park; and (3) whether revenue from fees collected for building operations and retiree benefits is subject to revenue sharing under MCL 600.8379(1)(c).

Thursday, October 6, 2016

Morning Session

Daniel Kemp v Farm Bureau General Insurance Co – Case # 151719

The issue in this case is whether plaintiff Daniel Kemp is entitled to no-fault personal protection insurance (PIP) benefits under MCL 500.3106(1), the no-fault act's parked vehicle provision. Kemp injured his right calf and lower back while taking personal items out of his truck. He sued defendant Farm Bureau, his insurance company, seeking no-fault benefits. Farm Bureau moved for summary disposition and argued that Kemp could not collect such benefits because he was not using the motor vehicle as a motor vehicle at the time of the injury, and the parked vehicle had only an "incidental" causal relationship to his injury. The trial court granted defendant's motion for summary disposition. Plaintiff appealed. The Court of Appeals affirmed the trial court's ruling in a split unpublished opinion. Plaintiff appealed and the Supreme Court issued an order scheduling oral argument on whether to grant the application or take other action. The questions before the Court include: (1) whether the plaintiff's injury is closely related to the transportation function of his motor vehicle, and thus whether the plaintiff's injury arose out of the ownership, operation, maintenance, or use of his motor vehicle as a motor vehicle; and (2) whether the plaintiff's injury had a causal relationship to his parked motor vehicle that is more than incidental, fortuitous, or but for. *McKenzie v Auto Club Ins Ass'n*, 458 Mich 214, 217 n 3, 225-226 (1998).

SBC Health Midwest, Inc v City of Kentwood – Case # 151524

Plaintiff SBC Health, a for-profit entity, operates Sanford-Brown College Grand Rapids, a post-secondary school located in the defendant City of Kentwood. SBC protested the assessment of taxes on its personal property, arguing that it was entitled to the exemption set forth at MCL 211.9(1)(a), which exempts from taxation the "personal property of charitable, educational, and scientific institutions incorporated under the laws of this state." The local Board of Review affirmed the assessments. SBC filed a petition with the Tax Tribunal, which also ruled in favor of the City of Kentwood. The Tax Tribunal concluded that only real estate and personal property owned and occupied by nonprofit institutions is exempt, and that SBC was not entitled to an exemption because it was a for-profit entity. The Court of Appeals reversed in an unpublished opinion, holding that MCL 211.9(1)(a) does not require that an educational institution be nonprofit in order to receive the benefit of the exemption, and that SBC is entitled to the tax exemption so long as it meets the requirements of that statute. It remanded the case to the Tax Tribunal for further consideration. The question before the Supreme Court is whether the tax exemptions set forth at MCL 211.9(1)(a) are available to a for-profit educational institution.

In re: Hon. J. Cedric Simpson – Case # 150404

This case involves a Judicial Tenure Commission (JTC) Complaint against 14-A District Court Judge Cedric Simpson. The JTC filed a three-count Formal Complaint (FC 96) alleging that Judge Simpson interfered with a police investigation, interfered with a criminal prosecution, and

made misrepresentations to the JTC during the investigation of the matter. Following hearings and consideration of the case by a master, the JTC recommended that Judge Simpson be removed from office for judicial misconduct. Judge Simpson has filed a petition asking the Supreme Court to reject or modify the JTC's recommendation.

Afternoon Session

Tod McLain, PR of the Estate of McLain v Lansing Fire Dep't – Case # 151421

This case involves the death of Tracy McLain. According to plaintiff's original complaint, Tracy McLain suffered a respiratory attack. When emergency personnel arrived, they administered medication and CPR, and inserted a breathing tube. Though McLain was promptly transported to the hospital, she was declared brain-dead several days after her admission, and died soon after. The complaint attributed McLain's death to the alleged placement of the breathing tube in her esophagus instead of her trachea. This claim was based on an intern's progress note. The trial court granted defendants' motion for summary disposition, holding that plaintiff had failed to create a question of fact that defendants treated McLain with gross negligence or willful misconduct, and that defendants were therefore entitled to governmental immunity. Plaintiff appealed. The Court of Appeals affirmed in a published opinion. Plaintiff appealed and the Supreme Court issued an order scheduling oral argument on whether to grant the application or take other action. The questions before the Court are: (1) whether the hospital intern's medical progress notes indicating that McLain had been observed with the breathing tube lodged in her esophagus were admissible evidence; and (2) if so, whether the Court of Appeals correctly ruled that, even if they were admissible, the notes were insufficient to create a question of fact as to whether the defendants were grossly negligent.

Bronson Methodist Hospital v MI Assigned Claims Facility– Case 151343-4

Bronson Methodist Hospital provided medical services to an injured driver, but failed to obtain insurance information from the patient. When its investigation failed to disclose whether the patient was insured, Bronson filed an application for benefits with the Michigan Assigned Claims Facility (now known as the Michigan Assigned Claims Plan, or MACP). The MACP denied the application, asserting that the owner of an uninsured motor vehicle is not eligible for benefits. Bronson sued, arguing that the MACP was required to approve the application and assign the claim. The circuit court disagreed, ruling that Bronson was obviously ineligible for benefits; it granted summary disposition to the MACP. In an unpublished opinion, the Court of Appeals vacated the circuit court orders dismissing Bronson's claims. The Court of Appeals panel held that there were unresolved questions of fact as to whether the injured person failed to maintain insurance, and whether Bronson was obviously ineligible to recover benefits. Bronson appealed, and the Michigan Supreme Court issued an order scheduling oral argument on whether to grant the application or take other action. The Supreme Court has asked parties to address whether the Court of Appeals erred when it concluded that the defendant Michigan Assigned Claims Plan could not deny the plaintiff hospital's application for assignment of its claim for benefits as "an obviously ineligible claim," MCL 500.3173a.

Spectrum Health Hospitals v Westfield Insurance Co - Case # 151419

Shawn Norman injured his right hand while changing a flat tire on his parents' vehicle in their driveway. Norman received care and treatment for his injuries at Spectrum, including the

surgical repair of his right finger. Spectrum incurred \$6,770.76 in medical expenses treating the injuries. Spectrum filed a claim with Westfield Insurance Company, seeking compensation for the treatment that it provided Norman. Westfield denied the claim, stating that Norman's treatment was not related to a motor vehicle accident. Spectrum filed suit in district court, arguing that it was entitled to compensation under *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), in which the Supreme Court held that a plaintiff injured while performing maintenance on a parked vehicle is entitled to compensation under MCL 500.3105(1). The district court agreed, and granted summary disposition to Spectrum. Westfield appealed, but the circuit court affirmed the district court's ruling, and the Court of Appeals denied leave to appeal. The Supreme Court issued an order scheduling oral argument on whether to grant the application or take other action. The Court has asked the parties to address: (1) whether *Miller v Auto-Owners Ins Co*, 411 Mich 633 (1981), remains a viable precedent in light of *Frazier v Allstate Ins Co*, 490 Mich 381 (2011), and *LeFevers v State Farm Mut Auto Ins Co*, 493 Mich 960 (2013); and (2) if so, whether *Miller* should be overruled.

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